

December 3, 2001

Ensure Congressional Oversight over Intellectual Property and Antitrust Policy!

Support H.R. 3019, the Rangel Plan for Presidential Trade Promotion Authority!

Dear Democratic Colleague:

As the full House prepares to grant the President trade promotion authority ("TPA," formerly known as "fast track") again, we are writing to urge that you support the Rangel proposal (H.R. 3019) and oppose the Thomas bill (H.R. 3005). The reason is clear: only the Rangel bill includes an effective mechanism for congressional participation in the President's trade negotiations on intellectual property and antitrust law, while the Thomas bill actually rolls back the existing level of oversight.

TPA is a substantial delegation of authority by Congress to the Executive – it authorizes the executive branch to negotiate trade agreements for up to seven years, with Congress bound at the end of the process to an up or down vote on a far-reaching package of changes to U.S. law; we could in no way amend or alter the agreement. TPA would encourage foreign states to enter into agreements with the President because such states would know that the agreement would not later be altered during the legislative process.

What is important to remember is that, as the economy becomes more global, antitrust and intellectual property policy become more important in trade negotiations because those areas more than any other impact domestic and international competition policies. Since the Uruguay Round, intellectual property rights (IPRs), such as patent rights on pharmaceuticals in developing countries, have been a central issue in trade negotiations. In fact, new negotiations in the World Trade Organization ("WTO") and Free Trade Area of the Americas ("FTAA") are likely to affect directly or indirectly this critical area of U.S. law. Antitrust law will be another key agenda item in the next round of WTO negotiations and in the negotiations to establish an FTAA. These negotiations will lead to new rules that could affect the application of U.S. law in wholly-domestic cases.

We hope you can agree that, as Members of Congress, we should consider only those TPA proposals that preserve our constitutional responsibility to regulate domestic and international commerce; any such proposal would set out clear and specific negotiating objectives and ensure a meaningful role for Congress in overseeing the implementation of those objectives. The importance of such a provision is highlighted by two occurrences. First, just seven years ago, when President Clinton's fast track authority lapsed in 1994, Congress on a bipartisan basis declined to extend it. This indicates that Congress has decided previously that TPA is not in the best interests of our nation, such that we should retain our option to do so again in the future. Second, since 1995, WTO dispute settlement panels have found two U.S. IPR laws to be in violation of our WTO obligations; we may have been able to avoid this result had Congress been given more authority to review fast track proposals. Even now, the Judiciary Committee, of which Mr. Conyers serves as Ranking Member, has been steeped in significant policy debates – such as the extent to which patent rights on pharmaceuticals should be enforceable in varying circumstances and the nature of copyright and trademark protection on the Internet – and the right to continue these debates and act on them should not be taken from us.

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In this regard, only the Rangel bill preserves a prudent but meaningful role for Congress. The Rangel package recognizes the importance of congressional prerogatives because, once every two years, one-third of either the House or Senate could start a process to review fast track, potentially leading to a revocation of TPA if the President has not respected congressional objectives.

The Thomas bill, on the other hand, provides for the President only to “consult” with Congress. This essentially would give a green light to Attorney General John Ashcroft, the Justice Department, and USTR to negotiate for Congress on all intellectual property and antitrust issues. This would preclude Congress – and specifically the Committee with jurisdiction over IPR and antitrust, the Committee on the Judiciary – from having a meaningful impact on the development and implementation of the U.S. position.

Furthermore, the Thomas bill actually gives Congress less authority than it has previously had over fast track provisions. A 1988 trade law contained two methods for Congress to withdraw fast track. First, with respect to any type of trade agreement, the House Ways & Means Committee and the Senate Finance Committee would both have had to report resolutions to the Floor repealing fast track authority, and both Houses would have had to approve the resolution. Second, with respect to bilateral trade agreements only, either Ways & Means or Finance could, on its own, pass a resolution to remove fast track. The Thomas plan includes only the more restrictive option, the first, which requires both Houses to concur on fast track repeal, and deletes the second option, which permits each House to exercise its own will.

In short, the Rangel plan would ensure that, as the President negotiates new commitments on issues that impact laws under the Judiciary Committee’s jurisdiction, Congress is an active partner in the formulation of intellectual property and antitrust policy. For these reasons, we urge you to support the Rangel proposal (H.R. 3019) and oppose the Thomas bill (H.R. 3005).

Sincerely,

John Conyers, Jr.
Member of Congress

Charles B. Rangel
Member of Congress